

Assembly Bill No. 2298

Passed the Assembly August 29, 2016

Chief Clerk of the Assembly

Passed the Senate August 23, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 70615 of the Government Code, and to amend Section 186.34 of, and to add Section 186.35 to, the Penal Code, relating to criminal gangs.

LEGISLATIVE COUNSEL'S DIGEST

AB 2298, Weber. Criminal gangs.

Existing law, the California Street Terrorism Enforcement and Prevention Act (act), provides specified punishments for certain crimes committed for the benefit of, at the direction of, or in association with, a criminal street gang, as specified. The act defines a “shared gang database” as having various attributes, including, among others, that the database contains personal, identifying information in which a person may be designated as a suspected gang member, associate, or affiliate, or for which entry of a person in the database reflects a designation of that person as a suspected gang member, associate, or affiliate. Existing law requires a law enforcement agency, before designating a person as a suspected gang member, associate, or affiliate in the database, to provide a written notice to the person’s parent or guardian, if the person is a minor.

This bill would require the notice described above to be provided to an adult before designating a person as a suspected gang member, associate, or affiliate in the database. The bill would require these databases to comply with federal requirements regarding the privacy and accuracy of information in the database, and other operating principles for maintaining these databases. The bill would require local law enforcement, commencing January 15, 2018, and every January 15 thereafter to submit specified data pertaining to the database to the Department of Justice, and would require the Department of Justice, commencing February 15, 2018, and every February 15 thereafter, to post that information on the department’s Internet Web site.

By imposing additional duties on local law enforcement entities, this bill would impose a state-mandated local program.

The bill would establish a procedure for a person designated in a shared gang database who has contested that designation with

the local law enforcement agency and whose challenge has been denied to appeal to the superior court.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 70615 of the Government Code is amended to read:

70615. The fee for filing any of the following appeals to the superior court is twenty-five dollars (\$25):

(a) An appeal of a local agency's decision regarding an administrative fine or penalty under Section 53069.4.

(b) An appeal under Section 40230 of the Vehicle Code of an administrative agency's decision regarding a parking violation.

(c) An appeal under Section 99582 of the Public Utilities Code of a hearing officer's determination regarding an administrative penalty for fare evasion or a passenger conduct violation.

(d) An appeal under Section 186.35 of the Penal Code of a law enforcement agency's determination regarding the placement of an individual's information in a shared gang database.

SEC. 2. Section 186.34 of the Penal Code is amended to read:

186.34. (a) (1) For purposes of this section, "shared gang database" shall mean any database that satisfies all of the following:

(A) Allows access for any local law enforcement agency.

(B) Contains personal, identifying information in which a person may be designated as a suspected gang member, associate, or affiliate, or for which entry of a person in the database reflects a designation of that person as a suspected gang member, associate, or affiliate.

(C) Is subject to Part 23 of Title 28 of the Code of Federal Regulations. If federal funding is no longer available to a database through the federal Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. Sec. 3711 et seq.), a database shall not have

to satisfy this subparagraph to meet the definition of a “shared gang database.”

(2) A “shared gang database” does not include dispatch operator reports, information used for the administration of jail or custodial facilities, criminal investigative reports, probation reports, or information required to be collected pursuant to Section 186.30.

(3) Notwithstanding subparagraph (C) of paragraph (1), a “shared gang database” includes the CalGang system, operated pursuant to Part 23 of Title 28 of the Code of Federal Regulations.

(b) Notwithstanding subparagraph (C) of paragraph (1) of subdivision (a), a shared gang database, as defined in this section, shall retain records related to the gang activity of the individuals in the database consistent with the provisions contained in Section 23.20(h) of Title 28 of the Code of Federal Regulations.

(c) (1) Commencing January 15, 2018, and annually on January 15 thereafter, any law enforcement agency that elects to utilize a shared gang database, as defined in subdivision (a), shall submit a report to the Department of Justice, in a format developed by the department, that contains, by ZIP Code, referring agency, race, gender, and age, the following information:

(A) The number of persons included in the database on the day of reporting.

(B) The number of persons added to the database during the immediately preceding 12 months.

(C) The number of requests for removal of a person from the database received during the immediately preceding 12 months.

(D) The number of requests for removal of a person from the database that were granted during the immediately preceding 12 months.

(E) The number of persons automatically removed from the database during the immediately preceding 12 months.

(2) Commencing February 15, 2018, and annually on February 15 thereafter, the Department of Justice shall post each law enforcement agency’s report that contains the information collected pursuant to paragraph (1) on the department’s Internet Web site.

(d) (1) To the extent a local law enforcement agency elects to utilize a shared gang database, as defined in subdivision (a), prior to a local law enforcement agency designating a person as a suspected gang member, associate, or affiliate in a shared gang database, or submitting a document to the Attorney General’s

office for the purpose of designating a person in a shared gang database, or otherwise identifying the person in a shared gang database, the local law enforcement agency shall provide written notice to the person, and shall, if the person is under 18 years of age, provide written notice to the person and his or her parent or guardian, of the designation and the basis for the designation, unless providing that notification would compromise an active criminal investigation or compromise the health or safety of the minor.

(2) The notice described in paragraph (1) shall describe the process for the person, or, if the person is under 18 years of age, for his or her parent or guardian, or an attorney working on behalf of the person, to contest the designation of the person in the database. The notice shall also inform the person of the reason for his or her designation in the database.

(e) (1) (A) A person, or, if the person is under 18 years of age, his or her parent or guardian, or an attorney working on behalf of the person may request information of any law enforcement agency as to whether the person is designated as a suspected gang member, associate, or affiliate in a shared gang database accessible by that law enforcement agency and what law enforcement agency made the designation. A request pursuant to this paragraph shall be in writing.

(B) If a person about whom information is requested pursuant to subparagraph (A) is designated as a suspected gang member, associate, or affiliate in a shared gang database by that law enforcement agency, the person making the request may also request information as to the basis for the designation for the purpose of contesting the designation as described in subdivision (f).

(2) The law enforcement agency shall provide information requested under paragraph (1), unless doing so would compromise an active criminal investigation or compromise the health or safety of the person if the person is under 18 years of age.

(3) The law enforcement agency shall respond to a valid request pursuant to paragraph (1) in writing to the person making the request within 30 calendar days of receipt of the request.

(f) Subsequent to the notice described in subdivision (d), the person to be designated as a suspected gang member, associate, or affiliate, or his or her parent or guardian, may submit written

documentation to the local law enforcement agency contesting the designation. The local law enforcement agency shall review the documentation, and if the agency determines that the person is not a suspected gang member, associate, or affiliate, the agency shall remove the person from the shared gang database. The local law enforcement agency shall provide the person and his or her parent or guardian with written verification of the agency's decision within 30 days of submission of the written documentation contesting the designation. If the law enforcement agency denies the request for removal, the notice of its determination shall state the reason for the denial. The person may appeal the denial pursuant to Section 186.35.

(g) Nothing in this section shall require a local law enforcement agency to disclose any information protected under Section 1040 or 1041 of the Evidence Code or Section 6254 of the Government Code.

SEC. 3. Section 186.35 is added to the Penal Code, to read:

186.35. (a) A person who is listed by a law enforcement agency in a shared gang database as a gang member, suspected gang member, associate, or affiliate and who has contested his or her designation pursuant to subdivision (f) of Section 186.34, may seek review within 90 calendar days of the agency's mailing or personal service of the verification of the decision by filing an appeal to be heard by the superior court. A proceeding under this subdivision is a limited civil case. A copy of the notice of appeal shall be served in person or by first-class mail upon the agency by the person. For purposes of computing the 90-calendar-day period, Section 1013 of the Code of Civil Procedure shall be applicable.

(b) The evidentiary record for the appeal shall be limited to the agency's statement of basis of its designation made pursuant to subdivision (e) of Section 186.34, and the documentation provided to the agency by the appellant pursuant to subdivision (f) of Section 186.34. If, upon de novo review and any arguments presented to the court, the court finds that the law enforcement agency has failed to establish the petitioner's active gang membership, associate status, or affiliate status by clear and convincing evidence, the court shall order the law enforcement agency to remove the name of the person from the shared gang database.

(c) The fee for filing the notice of appeal is as provided in Section 70615 of the Government Code. The court shall notify the

person of the appearance date by mail or personal delivery. The court shall retain the fee under Section 70615 of the Government Code regardless of the outcome of the appeal. If the court finds in favor of the person, the amount of the fee shall be reimbursed to the person by the agency.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Approved _____, 2016

Governor